

Sales Tax Implications for WSDOT Project Delivery Cost

Our mission, if you will, is to identify opportunities to reduce WSDOT project delivery costs and project delivery time. One obvious cost to consider is the imposition of the sales tax on state highway construction projects.

A primary source of funding for WSDOT projects is the gas tax. WSDOT construction projects are taxed like most other construction projects (with some notable exceptions), and the taxes levied go to the state's general fund. This tax is imposed on the expenditure of gas tax dollars for public works projects, and reduces how far WSDOT budget dollars go.

Interestingly, the manner of imposition of sales tax upon WSDOT projects increases project delivery costs somewhere in the range of 4-5% above that for the equivalent project for a city or county, a circumstance that is illustrated below. Actual sales tax costs for the state may vary depending upon project delivery method, percent of completion of preliminary design, and numerous other factors not considered below, and vary for city and county projects, depending upon the % of project costs associated with materials.

Relevant authority is as follows:

RCW 82.04.050 (Business and Occupation Tax Provisions)

"Sale at retail," "retail sale."

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(So by virtue of not including the state in the group of owners for which the sale at retail term applies, it does apply to the state.)

RCW 82.08.010 (Retail Sales Tax Provisions)

Definitions.

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi

municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

WAC 458-20-171 (Excise Tax Rules) Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

Definitions

As used herein:

The word "contractor" means a person engaged in the business of building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic, either as a prime contractor or as a subcontractor. It does not include persons who merely sell or deliver road materials to such contractors or to the public authority whose property is being improved. It also does not include persons who construct streets, roads, etc. *owned by the state of Washington*. (See WAC [458-20-170](#) for the tax liability of such persons.)

The term "street, place, road, highway, etc." is used in the ordinary sense that the combination of such words implies. It includes docks used primarily by ferry boats operated in connection with a street, road or highway, but does not include railroads, wharves, moorings, hallways, catwalks, or runways, aprons or taxiways for the landing, take-off or movement of airplanes within airports or landing fields; nor does it include ferry boats, even though the ferry be operated in connection with a street, road or highway. It includes roads and walks which are not open to the public generally, but which may be restricted to use by the military or by employees of a department or instrumentality of the United States.

The word "place" means only an area similar to a street or pedestrian walk, such as thoroughfares in various cities designated "places" for the purpose of preserving the continuity of street names or house numbers; generally, a street of shorter length than others.

The term "building, repairing or improving of a publicly owned street, place, road, etc.," includes clearing, grading, graveling, oiling, paving and the cleaning thereof; the constructing of tunnels, guard rails, fences, walks and drainage facilities, the planting of trees, shrubs and flowers therein, the placing of street and road signs, the striping of roadways, and the painting of bridges and trestles; it also includes the mining, sorting,

crushing, screening, washing and hauling of sand, gravel, and rock taken from a public pit or quarry. It also includes the constructing of road and street lighting systems, even though portions of such systems also are used for purposes other than street and road lighting; also the constructing of a drainage system in streets and roads, even though such system is also used for the carrying of sewage: Provided, That the drainage facilities are sufficient for disposal of the normal runoff of surface waters from the particular streets and roads in which the system is constructed or an ordinance authorizing the construction of a combined sewer system is incorporated by reference in the contract and the contract or specifications clearly indicate that the system is designed and intended for the disposal of the normal runoff of surface waters from the streets and roads in which the system is constructed.

The term includes any contract for the readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of building, repairing or improving a street, place, road, etc., which is owned by a municipal corporation or political subdivision of the state or by the United States, the cost of which readjustment, reconstruction, or relocation is the responsibility of the public authority whose street, place, road, etc., is being built, repaired or improved. It also includes building or repairing mass transportation facilities owned by a municipal corporation or political subdivision of the state or by the United States.

Except as provided above, the term does not include the constructing of water mains, telephone, telegraph, electrical power, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system as aforesaid; nor does it include the constructing of sewage disposal facilities, nor the installing of sewer pipes for sanitation, unless the installation thereof is within, and a part of, a street or road drainage system.

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Retail Sales Tax

The retail sales tax applies upon the sale to such contractors of all materials including prefabricated and precast items, equipment and supplies used or consumed in the performance of such contracts.

The retail sales tax does not apply upon any portion of the charge made by such contractors.

The sales tax does not apply to charges made for labor and services which are exempt from business tax as indicated above.

How this works in practice:

For county and city highway projects the sales tax is imposed upon the materials component only of the contract, and is typically included in the contractor's gross bid.

For state highway projects the contractor's bid typically does not include the sales tax, and it is added upon the entirety of the bid price, including both labor and materials.

For state highway projects that are delivered by design/build, the sales tax is also imposed upon the entire contract price, including the final design component within the design/builder's scope of work.

Simple solution:

Create a specific sales tax exemption within RCW 82.08 (Retail Sales Tax Provisions), such as the following:

"RCW 82.08.XXX Exemptions -- The tax levied by RCW 82.08.020 shall not apply to the sale of or charge made for labor and services rendered or materials supplied in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by the state and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind."

Additionally, to make sure that the Excise Tax is not levied upon these same transactions as an alternative, create an exemption within the Use Tax provisions (RCW 82.12) such as the following:

"RCW 82.12.XXXX Exemptions -- The provisions of this chapter shall not apply in respect to the sale of or charge made for labor and services rendered or materials supplied in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by the state and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind."

This approach would still leave state road construction as a sale at retail for B&O tax purposes, and prime contractors would continue to pay Retailing B&O tax (RCW 82.04.250), and suppliers would continue to pay Wholesaling B&O tax (RCW 82.04.270) on their gross income.

The illustration that follows is hypothetical, and provided only to demonstrate how the sales taxes are imposed in practice.

Assume a highway project with a \$100MM budget for design and construction, exclusive of any ROW, permitting and environmental costs. Also assume design costs to be 12% of budget, construction labor 53%, and construction materials 35%.

If a county project:

Traditional design/bid/build:

<u>Element</u>	<u>% of Budget</u>	<u>Cost</u>	<u>Sales Tax</u>	<u>Total Cost</u>
Design	12%	12MM	0	12MM
Construction				
Labor	53%	53MM	0	53MM
Materials	32.258%	32,258MM	2.74MM	<u>35MM</u>
				\$100MM

Design/Build:

Prelim Design	.3X12%	3.6MM	0	3.6MM
Design/Build				
Fin. Des.	.7X12%	8.4MM	0	12MM
Con Labor	53%	53MM	0	53MM
Con Mats	32.58%	32.58MM	2.742MM	35MM
				\$100MM

If a WSDOT Project:

Traditional design/bid/build:

Design	12%	12MM	0	12MM
Construction				
Labor	53%	53MM	4.505MM	57.505MM
Materials	32.258%	32.258MM	2.742MM	57.505MM
4.5%>>County				\$104.505MM

Design/Build:

Prelim Design .3X12%	3.6MM	0	3.6MM
D/B			
Fin Design .7X12%	8.4MM	.714MM	9.114MM
Constr Lab 53%	53MM	4.505MM	57.505MM
Mats 32.258%	32.258MM	2.742MM	35MM
5.22%>>county			\$105.219MM

If WSDOT projects exempted: Project Delivery Costs would run about 3%<<county or city projects, and result in an approximately 8.5% reduction in current project delivery costs, exclusive of design phase costs, including preliminary design phase for projects utilizing design/build project delivery.